



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0482]

RIN 1625-AA87

Security Zone; Naval Exercise; Pacific Ocean, Coronado, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the vicinity of Naval Anchorage 172, offshore of Silver Strand Beach, Coronado, CA. This security zone is to restrict vessels to a 1000 yard exclusion zone and a 1500 yard minimum speed zone from an anchored naval high value unit vessel during a Naval exercise, which will be conducted by the United States Navy. This temporary security zone is necessary to protect the public from the hazards associated with this evolution.

DATES: This rule will be enforced with actual notice from 12:01 a.m. on June 8, 2013, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This rule is effective in the Code of Federal Regulations from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], until 11:59 p.m. on July 3, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0482]. To view documents mentioned in this

preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant John Bannon, Chief Waterways Management, U.S. Coast Guard Sector San Diego; Coast Guard; telephone 619-278-7267, e-mail John.E.Bannon@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency

for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because an NPRM would have been impracticable.

Logistical details surrounding this exercise were not finalized nor presented to the Coast Guard in time to draft and publish an NPRM as well as the sensitive nature of the cargo handled and security of a national high value unit and not alerting the public in greater detail to the exercise dates, times, and location.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. An NPRM would be impracticable and contrary to the public interest because details of this exercise were not known in time and immediate action is needed to ensure public safety due to the nature of the operation.

B. Basis and Purpose

The United States Navy will lead a naval exercise offshore of Silver Strand, Coronado at Naval Anchorage 172. This temporary security zone is necessary to ensure non-authorized vessels remain safely away from naval operations by keeping clear of the restricted area during the proposed 26-day exercise. The Naval Vessel Protection Zone provides for security of naval

vessels, however an increased secure zone is necessary due to the nature of the operation. Should operations end before the final proposed exercise date, the temporary security will end also.

C. Discussion of the Final Rule

The Coast Guard is establishing this temporary security zone that would be enforced from 12:01 a.m. on June 8, 2013, through 11:59 p.m. on July 3, 2013. The limits of the security zone will encompass all waters within a 1000 yard exclusion zone and a 1500 yard minimum speed zone from the United States Naval vessels. This security zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the naval operations. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this security zone unless authorized by the Captain of the Port, or his designated representative.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3)

of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the size and location of the security zone. Recreational vessels will not be allowed to transit through the designated security zone during the specified times, however ample space to maneuver and use the waterway around the anchorage zone exists. This portion of the waterway is administered by the U.S. Navy for anchorage use and naval exercises are historically common in the vicinity of shoreside Naval bases. The limited access area will only be enforced as long as the operation is ongoing. Should operations end before the final proposed exercise date, the temporary security will end also.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial

number of small entities. Vessel traffic can pass safely around the security zone.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary security zone to support the security of a naval vessel. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Categorical Exclusion Determination and environmental checklist are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard

amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T11-577 to read as follows:

§ 165.T11-577 Security Zone; Naval Exercise; Pacific Ocean, Coronado, CA.

(a) Location. The limits of the security zone will encompass all waters within a 1000 yard exclusion zone and a 1500 yard minimum speed zone from the United States Naval vessels at the Naval Anchorage 172 approximate position: 32°38'30.8"N, 117°11'30.0"W.

(b) Enforcement Period. This section will be enforced from 12:01 a.m. on June 8, 2013 through 11:59 p.m. on July 3, 2013. If the operation is concluded prior to the scheduled termination time, the Captain of the Port will cease enforcement of this security zone and will announce that fact via Broadcast Notice to Mariners.

(c) Definitions. The following definition applies to this section: designated representative, means any commissioned, warrant, or petty officers of the Coast Guard, Coast Guard

Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) Regulations. (1) Entry into, transit through or

anchoring within this security zone is prohibited unless authorized by the Captain of the Port of San Diego or the designated U.S. Navy representative.

(2) Mariners requesting permission to transit through the security zone may request authorization to do so from the Naval Vessel at anchorage, U.S. Naval security team or from the Coast Guard Sector San Diego Joint Harbor Operations Center.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: June 7, 2013

S. M. Mahoney

Captain, U.S. Coast Guard

Captain of the Port San Diego

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